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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,790	03/25/2004	David Bruce Bayless		7142

7590 10/20/2006

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EXAMINER

OLSON, MARGARET LINNEA

ART UNIT	PAPER NUMBER
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3782

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,790

Applicant(s)

BAYLESS, DAVID BRUCE

Examiner

Margaret L. Olson

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority, under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings were received on 6/30/2004. These drawings are not acceptable.
2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the construction of the holster as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. The use of reference numbers corresponding to the details in the specification is encouraged in order to clarify what is being depicted in each drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the

Art Unit: 3782

examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings do not comply with 37 CFR 1.84(l), which requires the lines of the drawings to be clean and well defined, so that they are suitable for reproduction. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

1. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;

Art Unit: 3782

- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

2. The abstract of the disclosure is objected to because the numbers "0006" are not separated from the text of the abstract. Correction is required. See MPEP § 608.01(b).
3. The abstract of the disclosure is objected to because it is entirely in capital letters. Correction is required. See MPEP § 608.01(b).
4. The disclosure is objected to because of the following informalities: it is entirely in capital letters. Only the section headings should be in uppercase. Appropriate correction is required.
5. The disclosure is objected to because of multiple and pervasive grammatical errors in the specification. For example, the first page contains the following informalities:
 - a. The first sentence in paragraph 0001 is a run-on sentence.
 - b. In the first sentence, in the phrase "the concealed carry of weapons", the subject and verb do not agree.
 - c. In the first sentence, it is not clear whether the phrase "a new type or design" is a typo.

Art Unit: 3782

d. In the first sentence “use for concealed carry for law enforcement, government, and private citizens” makes it unclear whether the device is meant to carry people in a concealed manner.

e. In the second sentence the subject and verb do not agree: “Problems with other concealed weapons holsters has been...”. The correct form of the verb is “have been.”

The applicant is encouraged to correct the numerous grammatical errors throughout the rest of the document.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 2, and 3 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph. It is also not clear from the structure of the claims whether one claim is being made or three separate claims are being made. For the purposes of examination, each numbered section of text is being treated as a separate claim.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They are replete with grammatical and idiomatic errors. The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a

complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

8. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

The phrase "this entire holster system" does not adequately specify the holster system that the applicant wishes to claim. Additionally, "the three ways it can and should be used" are not enumerated. Two statutory subject matters, the holster and the method of using the holster, are contained in this single claim, though they properly belong in two separate claims.

9. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "possibly sewing the bottom together or not" does not adequately limit the scope of the claim.

10. Claim 2 contains the trademark/trade name "Velcro". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the

Art Unit: 3782

present case, the trademark/trade name is used to identify/describe a hook and loop fastener and, accordingly, the identification/description is indefinite.

11. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "process and design of a concealed weapons system" does not adequately limit the scope of the claim. The phrase "tailored to or toward" may be interpreted so broadly as to render the scope of the claims indefinable. There is no description of what the process or design claimed for protection might actually entail.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. To the extent that they are understood, claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Young (US 2003/0205595). Young discloses a holster system for use with cargo pockets (paragraphs 0012, 0013) with an object secured inside by a sewn hook and loop fastener (paragraph 0011).

With respect to claim 3, Young discloses a process and design for a concealed weapons system meant to be used inside a cargo pocket or a pair of cargo pants (paragraph 0015).

14. To the extent that it is understood, Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Rassias (US 6,149,042). A holster system that may be adjusted in length along the leg could be used under the clothing with cargo pockets. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Rassias which is capable of being used in the intended manner, i.e., under a pair of cargo pants or shorts to conceal an object. (see M.P.E.P. 2111).

15. To the extent that it is understood, claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Baird (US 5,842,584). Baird discloses a series of holsters to hold objects formed by pressing a side of hook Velcro 18 to a side of loop Velcro 15 and sewing the sides together at seams 19 (figure 3; column 4, lines 13-18).

16. To the extent that they are understood, claims 1, 2, and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Westrick (US 6,131,198). Westrick discloses a holster system for use in a cargo pocket on a vest (figure 2; figure 3). The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Westrick which is capable of being used in the intended manner, i.e., as a cargo pocket on a pair of pants or shorts (see M.P.E.P. 2111).

With respect to claim 2, Westrick discloses a holster to hold an object formed by pressing a hook fastener 94 to a loop fastener 34, then sewing the sides of the holster at 44 and 48 (column 3, lines 33-34; lines 27-30).

With respect to claim 3, Westrick discloses a concealed weapons system tailored to be used with or in a cargo pocket. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Westrick which is capable of being used in the intended manner, i.e., as a cargo pocket on a pair of pants or shorts (see M.P.E.P. 2111).

Conclusion

17. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents

Art Unit: 3782

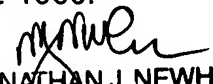
located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hoffner (US 5,765,738) and Rosenthal (US 3,616,498) all disclose similar inventions.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret L. Olson whose telephone number is (571) 272-9002. The examiner can normally be reached on MTWR, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER